

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOBBY DARRELL COLBERT,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. C23-1122-JNW-MLP

ORDER TO SHOW CAUSE

Petitioner Bobby Colbert is a state prisoner who is currently confined at the Stafford Creek Corrections Center in Aberdeen, Washington. He has submitted to this Court for consideration a document which he identifies as a “Request for Records.” (*See* dkt. # 6-1.) Petitioner indicates therein that he intends to file a federal habeas petition and he moves this Court for an order directing Respondent to produce records relating to Petitioner’s state court criminal proceedings for purposes of preparing his petition. (*See id.*) Petitioner has also submitted to the Court for consideration an application seeking leave to proceed with this action *in forma pauperis*, and a motion seeking pre-petition appointment of counsel to assist in development of the claim he intends to raise in his contemplated federal habeas petition. (*See* dkt. ## 4, 6.)

ORDER TO SHOW CAUSE  
PAGE - 1

1           Petitioner indicates that he is seeking records relating to Skagit County Superior Court  
2 Case No. 04-1-00497-6, the conviction he presumably intends to challenge in a future habeas  
3 petition. (Dkt. # 6-1 at 4.) A review of this Court's records reveals that Petitioner has previously  
4 filed six federal habeas petitions challenging that same conviction. *See Colbert v. McDonald*,  
5 C08-0870-RSL; *Colbert v. Sinclair*, C11-0076-RSM; *Colbert v. Glebe*, C12-0563-RAJ; *Colbert*  
6 *v. Gilbert*, C16-1663-RSL; *Colbert v. Haynes*, C18-1350-RSM; *Colbert v. Haynes*, C19-0467-  
7 RAJ. Petitioner's last four habeas petitions were deemed successive and were either transferred  
8 to the Ninth Circuit as second or successive petitions (C12-0563-RAJ and C16-1663-RSL) or  
9 dismissed (C18-1350-RSM and C19-0467-RAJ).

10           In light of Petitioner's litigation history, it appears likely that Petitioner's anticipated new  
11 federal habeas petition, once filed, would be deemed successive under 28 U.S.C. § 2244(b). As  
12 Petitioner well knows by now, this Court is without jurisdiction to consider a second or  
13 successive habeas petition until the Ninth Circuit Court of Appeals has authorized its filing. *See*  
14 28 U.S.C. § 2244(b)(3)(A); Circuit Rule 22-3. Petitioner provides no evidence that the Ninth  
15 Circuit has authorized the filing of a new petition, nor any authority demonstrating that this  
16 Court has jurisdiction to entertain a request for production of records in this context.

17           Accordingly, the Court hereby ORDERS as follows:

18           (1)     Petitioner shall SHOW CAUSE, not later than ***thirty (30) days*** from the date on  
19 which this Order is signed, why this matter should not be dismissed for lack of jurisdiction.  
20 Failure to timely respond to this Order will result in a recommendation that this action be  
21 dismissed for failure to prosecute.

22           (2)     Petitioner's motion to appoint counsel (dkt. # 4) is STRICKEN pending a final  
23 determination of whether the instant action is properly before this Court.

1 (3) The Clerk is directed to send copies of this Order to Petitioner and to the  
2 Honorable Jamal N. Whitehead.

3 DATED this 3rd day of November, 2023.

4 

5 MICHELLE L. PETERSON  
6 United States Magistrate Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23